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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PETER SCHLAAK,
MICHAEL KRENBauer,
MARTIN PREISS, and
EDGAR WICHT

Appeal 2009-009341
Application 10/611,319
Technology Center 3600

Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and
ANTON W. FETTING, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Peter Schlaak, et al. (Appellants) seeks our review under 35 U.S.C. § 134 of the final rejection of claims 1-30. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We REVERSE.²

THE INVENTION

The invention is a method of “handing incoming customer delivery schedules in a supply chain.” Specification 2:8-9.

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A method, performed on a computer of supplier, for use in managing a supply chain with multiple customers, the method comprising:
 - receiving a new delivery schedule from a customer;
 - determining a deviation between the new delivery schedule and a confirmed delivery schedule from the customer; and
 - determining if the new delivery schedule is eligible for further consideration based on the deviation;

wherein, if the new delivery schedule is eligible for further consideration, the method further comprises:

 - generating a schedule of production resources and inventory that satisfies at least some requirements of the new delivery schedule; and
 - confirming to the customer that the supplier accepts the new delivery schedule.

² Our decision will make reference to the Appellants’ Appeal Brief (“App. Br.”, filed Aug. 14, 2008) and Reply Brief (“Reply Br.”, filed Dec. 8, 2008), and the Examiner’s Answer (“Answer,” mailed Nov. 14, 2008).

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Tsukuda	US 6,085,170	Jul. 4, 2000
Holland	US 2002/0143605 A1	Oct. 3, 2002

The following rejections are before us for review:

1. Claims 1-7, 11-17, and 21-27 are rejected under 35 U.S.C. §102(b) as being anticipated by Tsukuda.
2. Claims 8-10, 18-20, and 28-30 are rejected under 35 U.S.C. §103(a) as being unpatentable over Tsukuda and Holland.

ISSUE

The issue is whether claims 1-7, 11-17, and 21-27 are anticipated under 35 U.S.C. § 102(b) by Tuskuda. Specifically, the issue is whether Tsukuda describes generating a schedule of production resources and inventory that satisfies at least some requirements of the new delivery schedule. The rejection of claims 8-10, 18-20, and 28-30 under 35 U.S.C. §103(a) as being unpatentable over Tsukuda and Holland also turns on this issue.

FINDINGS OF FACT

We find that the following enumerated findings of fact (FF) are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1. Tsukuda describes a system for delivering goods from a distribution center to a receiver. Col. 3, ll. 63-67.
2. In Tsukuda's Figure 1, step 101 is labeled "Notice of List of Available Date for Delivery." See Col. 3, ll. 4.
3. Tsukuda states: "A step 101 is a step for notifying the personal information server of a list of a schedule for delivery by using the delivery information 121 and delivery goods information 122." See Col. 4, ll. 37.
4. Tsukuda's Figure 5, is a detailed flow of step 101 and describes how notifications of delivery time and date are sent to the electronic addresses of the receivers of the goods. Col. 5, ll. 1-24.

ANALYSIS

The rejection of claims 1-7, 11-17, and 21-27 under 35 U.S.C. §102(b) as being anticipated by Tsukuda.

The Appellants argue that step 101 of Tsukuda, cited by the Examiner, does not describe a step of generating a schedule of production resources and inventory that satisfies at least some requirements of the new delivery schedule. App. Br. 9-10 and Reply Br. 3. The Examiner responds by asserting that step 101 in Tsukuda is "a notification step that generates a list of schedule of production resources and inventory for delivery by using the delivery information 121 and delivery goods information 122." Answer 6.

However, Tsukuda describes that in step 101 notification of time and date for delivery is sent to the electronic address of a receiver. FF 1-4. We fail to see how this description anticipates a step of generating a schedule of production resources and an inventory that satisfies at least some

requirements of the new delivery schedule. Likewise, the Examiner does not provide any other explanation (*See Answer 3 and 6*). “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987). Accordingly, we find that the Appellants have overcome the rejection of claim 1, and claims 2-7, dependent thereon, under 35 U.S.C. §102(b) as being anticipated by Tsukuda.

We note that independent claims 11 and 21 recite a machine-readable medium that store instructions and a process that executes instructions for performing the generating step. The Examiner rejected these claims using the same rationale as used for claim 1 (*see Answer 3*) and the Appellants traverse the rejection of these claims for the same reasons used to traverse the rejection of claim 1 (*see App. Br. 7-10*). For the reason discussed above, we find that the Appellants have also overcome the rejection of claims 11 and 21, and claims 12-17 and 22-27, dependent thereon, under 35 U.S.C. §102(b) as being anticipated by Tsukuda.

The rejection of claims 8-10, 18-20, and 28-30 under 35 U.S.C. §103(a) as being unpatentable over Tsukuda and Holland.

Claims 8-10, 18-20, and 28-30 depend from claims 1, 11, and 21. In rejecting these claims the Examiner relies upon the same finding that Tsukuda described the step of generating a schedule of production resources and inventory. The Examiner did not rely upon Holland to teach this step. *See Answer 5*. Accordingly, for the same reason discussed above, we find that the Appellants have overcome the rejection of claims 8-10, 18-20, and

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28-30 under 35 U.S.C. §103(a) as being unpatentable over Tsukuda and Holland.

DECISION

The decision of the Examiner to reject claims 1-30 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

REVERSED

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